

(2002) 02 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19496 of 2001

R. Yadaiah and Another

APPELLANT

Vs

Prohibition and Excise Superintendent, Ranga Reddy District,
Hyderabad and Another

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 — Rule 7
Andhra Pradesh Excise Act, 1968 — Section 31(1)

Citation : (2002) 2 ALD 839 : (2002) 6 ALT 288

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Amarnath Goud, for the Appellant; Government Pleader, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Prasanna Kumar, Counsel representing Sri Amarnath Goud, the learned Counsel for the petitioners and Sri Chandraiah, the learned Government Pleader for Excise.

2. The facts of the case are simple. The writ petition is filed for a writ, order or direction declaring Cr. No. ES/C/8357/98, dated 70-9-2001 and 2-8-2001 of 1st respondent as illegal, arbitrary and to set aside the same and direct the respondents to permit the petitioners to carry on the business upto 30-9-2001 and further renew the licence from 1-10-2001 onwards by suspending the operation of Cr. No. ES/C/ 8357/98, dated 7-9-2001 and 2-8-2001 of 1st respondent and pass such other suitable orders.

3. The petitioners filed the writ petition mainly aggrieved of the proceedings of the 1st respondent dated 2-8-2001 wherein it was stated as follows :--

"Hence under the above circumstances by virtue of powers vested in me under Clause b of Sub-section (1) of Section 31 of the A.P. Excise Act, 1968, I, P. Sanjeeva Prasad, Prohibition and Excise Superintendent, Ranga Reddy District,

being the licensing authority do hereby cancel the licences bearing No. 465, dated 4-12-1996 for counter bearing Nos. 4 and 2 valid upto 30-9-2001 issued in favour of Sarvasri K. Srisailam, S/o. Hanumaiah and B. Yadaiah, S/o. Kistaiah, R/o. Bakaram village of Moinabad, Rangareddy District under TFT scheme with immediate effect.

The order of cancellation of licences is sent herewith in duplicate. They should retain the original and return the duplicate copy duly acknowledging the receipt of the original with dated signatures."

It is stated in the affidavit that licence number in respect of 1st petitioner is 465, Counter No. 2 licence dated 4-10-1996 and valid upto the end of September, 2001. The 2nd petitioner's licence number is 465, counter No. 4, dated 4-10-1996 and valid upto the end of September, 2001 and both are having valid licences for selling toddy at Bakaram village toddy shop and the petitioners have been selling pure toddy and have been conducting the business without violating the terms and conditions of the licences and the provisions of A.P. Excise Act and Rules and the Policy, It is further stated that a case was registered in PR No. 241/97-98, dated 16-8-1998 by Prohibition and Excise Inspector, Excise Station, Chevella in respect of the petitioners' TFT licence counters Nos. 1 and 8 on an allegation that the toddy sold is adulterated with Diazepam and on the same cause of action the case had been taken on file and the same was numbered as SC No.29 of 2000 on in the Court of I Additional Sessions Judge, Ranga Reddy at L.B. Nagar, Hyderabad and the writ petitioners were acquitted by judgment dated 6-4-2001. It is further stated that without waiting for the result of or finality of the legal proceedings, the licences for the remaining period had been cancelled, valid upto 30-9-2001, vide cancellation of licence orders dated 2-8-2001 and the said cancellation is a predetermined one and no doubt several other allegations also had been made, which may not have much relevance for the purpose of disposal of the present writ petition.

4. A counter-affidavit is filed taking a stand that the writ petitioners had intentionally involved in adulteration of toddy with Diazepam, which is injurious to public health and thereby contravened Rule 5 of A.P. Excise (Tapping of Trees and Toddy Shops, Special Conditions of Licences) Rules, 1969 punishable u/s 37 of the A.P. Excise Act, 1968. Therefore as precautionary and temporary measure to prevent the supply and sales of adulterated toddy the licences were suspended on 11-11-1998 pending enquiry - criminal action and cancellation of licences in the interest of public health and orders were served on them on 9-3-1999. The request made by the licensee to send the second sample of toddy in the case to State Food Laboratory, Nacharam for independent analysis was also considered in pursuance of the orders of the Honourable High Court of A.P. in WPMP No.12970 of 1999, in WP No.10565 of 1999, dated 26-5-1999 and the Chief Public Analyst, State Food Laboratory, Nacharam had opined that the sample contains Saccharin and Diazepam and therefore adulterated and hence the adulteration of toddy by the licensees had been proved beyond reasonable

doubt. Hence a show-cause notice for cancellation of licences was issued on 28-4-2001 calling for the explanation of the petitioners if any, within seven days from the date of receipt of the notice. The notice was served on 22-6-2001 and they had not submitted any explanation. Hence the licences had been cancelled on 2-8-2001 and the same were served on the petitioners on 31-8-2001. It is also stated in the counter affidavit that only benefit of doubt was given to the petitioners in SC No.29 of 2000 on the file of I Additional Sessions Judge, Ranga Reddy District. It was also stated that in the light of the specific provisions provided under the Act and the rules framed thereunder, the impugned order of cancellation is in accordance with law and hence there are no merits in the writ petition to grant any relief under Article 226 of the Constitution of India.

5. The learned Counsel for the writ petitioners has contended that on the same set of facts a competent criminal Court had arrived at a conclusion that the petitioners are not guilty and they were acquitted in SC No.29 of 2000 on the file of I Additional Sessions Judge, Ranga Reddy District. The learned Counsel had taken me through the contents of the said judgment. The learned Counsel also had drawn my attention to the impugned proceedings dated 2-8-2001 and had submitted that in the light of the acquittal recorded by the competent criminal Court, the renewal of the licences of the writ petitioners should have been considered by the 1st respondent and instead the licences had been cancelled and the said action is arbitrary and illegal.

6. The learned Government Pleader for Excise had made elaborate submissions. The mere acquittal recorded by a competent criminal Court will not come in the way of the 1st respondent in making the impugned order. The learned Counsel further contended that the department can incidentally arrive at a conclusion relating to the allegations and that is what had been done by the 1st respondent by making the impugned order which was made in accordance with the provisions of the Act and the rules and hence the impugned order cannot be interfered with by this writ Court. The learned Counsel had drawn my attention to Sections 31 and 37 of the Act and also Rule 7 of A.P. Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969. The learned Counsel also had drawn my attention to Section 63 of the Act and had contended that there is an alternative remedy by way of an appeal and the writ petitioners had approached this Court straightway.

7. After adverting to the respective contentions of the parties, the relevant portion of the impugned order also may be looked into. The impugned order dated 2-8-2001 of the 1st respondent, so far as it is relevant, reads as follows:

"On 16-8-1998 at 6-10 p.m., one of the Prohibition and Excise Sub-Inspectors of the Prohibition and Excise Station, Chevella, one of the Prohibition and Excise Sub-Inspectors of the Sub-Divisional Task Force, Chevella and one of the Trained Prohibition and Excise Sub-Inspectors along with mediators surprised the counter Nos.4 and 2 of TFT toddy shop Bakaram of Mandal Moinabad. During surprise check the officers found a stock of 31.20 Ltrs., of toddy in (2) wooden crates.

The officers tested the toddy with required chemicals in the presence of the vendor and mediators and found that the toddy is free from Chloral Hydrate. However, on suspicion, the officers drew three samples of toddy under cover of panchanama and handed over case papers and property to the Prohibition and Excise Inspector, Chevella. The Prohibition and Excise Sub-Inspector, Station Chevella registered a case vide COR No. 241/97-98, dated 16-8-1998 under Rule 24 of A.P. Excise (Arrack and Toddy Licences, General Conditions) Rules, 1969 against the licensees of counter Nos. 4 and 2 of the TFT toddy shop Bakaram and produced the case papers and property before the Honourable Judicial First Class Magistrate, Kothapet with a request to send one of the samples to the Government Chemical Examiner for Prohibition and Excise, Regional Prohibition and Excise Laboratory, Hyderabad for analysis and report.

The Government Chemical Examiner for Prohibition and Excise, Regional Prohibition and Excise Laboratory, Hyderabad has opined vide CE No. 9913/98, dated 6-10-1998 that the sample is fermented toddy adulterated with Diazepam.

Thus, the TFT licensees Sri. K. Srisailam, S/o. Hanunaiah and B. Yadaiah, S/o. Kistaiah of toddy shop, Bakaram village of Moinabad Mandal, holding licences bearing No. 465, dated 4-10-1996 for counter Nos. 4 and 2 valid upto 30-9-2001 have intentionally involved in adulteration of toddy with Diazepam, which is injurious to the public health and thereby contravened Rule 5 of A.P. Excise (Tapping of Trees and Toddy Shops, Special Conditions of Licences) Rules 1969 and Rule 11 of A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 punishable u/s 37 of A.P. Excise Act, 1968. As a precautionary and temporary measure to prevent the supply and sales of adulterated toddy, the licences have been suspended (supra) pending enquiry, criminal action and cancellation of licence in the interest of public health.

The orders of suspension of licence were served on the licensee on 9-3-1999.

The request made by the licensee to send the second sample of toddy in this case to State Food Laboratory, Nacharam for independent analysis was also considered in pursuance of the orders of Honourable High Court of Andhra Pradesh in (supra) through Cr. No. E5/C/8357/98, dated 15-7-1999.

The Chief Public Analyst, State Food Laboratory, Nacharam has opined vide his Lr. No. 1467/SFL/99, dated 5-10-1999 that the sample contains Saccharin and Diazepam and that it is therefore adulterated.

Thus, the adulteration of toddy by the licensees of the TFT Toddy Shop Bakaram is proved beyond reasonable doubt.

Therefore, a show-cause notice for cancellation of licence was issued (supra) calling them to submit their explanation if any, within 7 days from the date of receipt of the notice. The said notice was served on the licensees on 22-6-2001. The licensees did not submit any explanation till today.

Therefore it is construed that the licensees have got no explanation to offer".

It is no doubt true that several provisions of the Act and the rules had been referred. But as can be seen (*supra*), there is no reference relating to the judgment of the competent criminal Court at all. Rule 7 of the A.P. Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 deals with prohibition of certain persons to enter the place of auction and Sub-rules (b) and (bb) of the Rule 7, read as follows:

8. Hall Tickets shall not be issued to any person who,--

"(b) has been convicted or whose licence has been cancelled for breach of any of the conditions of licence granted u/s 31 of the Act within the preceding three years."

"(bb) has been held guilty either in a departmental proceeding or in a Court of an offence u/s 37 of the Act for adulteration of toddy or arrack by mixing any article injurious to public health or otherwise within the preceding five years."

The learned Government Pleader had laid stress on the words " ...has been held guilty either in a departmental proceeding or in a Court of an offence u/s 37 of the Act..." in Rule 7(bb). On the strength of these words, it is contended that in a departmental proceeding, an independent enquiry can be conducted and the learned Counsel also had stressed on Rule 7(b) of the said Rules and also Rule 9 dealing with disqualification and Rule 9(b) which specifies persons who have been prohibited under Rules 5 to 8. Further, Section 31 of the A.P. Excise Act, 1968 deals with power to cancel or suspend licence etc., and Section 31(1)(b) of the Act reads as follows:

(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates,

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof;

Section 37 of the Act deals with penalty for adulteration by licensed vendor or manufacturer. In substance the contention of the learned Government Pleader for Excise is that though an acquittal is recorded, in the light of the aforesaid provisions, the departmental authorities can arrive at an independent conclusion and may exercise the discretion of refusing to renew the licence or cancel the licence and in this view of the matter, the impugned order is in accordance with law.

9. In WP No. 6102/79, dated 30-7-1980, while dealing with Section 37-A of the Act and Memorandum No. 2373/T1/79, dated 19-9-1979 and the letter No. 36075/79, dated 17-8-1979 issued by the Government, it was held by this Court that the licensee acquitted in criminal prosecution under the Act is entitled to the grant or renewal of licence. In *Mallaiah v. Superintendent of Excise* 1988 (1) ALT 603) it was held that refusal of authorities to renew licences under the Tree for

Tappers Scheme on ground of licensees being involved in adulteration cases and the authorities putting the shops to auction pending criminal proceedings, is not legal. The decisions cited by the learned Counsel representing the writ petitioners in fact are distinguishable on facts. But however, the question that has to be decided is when a competent criminal Court had recorded acquittal, on the same set of facts whether the licensing authority can ignore the same while exercising his discretion while making an order relating to either renewal or cancellation of such licences. In my considered opinion, the answer must be in negative only, the reason being, when on the same set of facts a competent criminal Court had arrived at a particular conclusion, the licensing authority is expected to take into consideration the said fact also while making an order in relation to either renewal of licence or cancellation of licence. At least to this limited extent, definitely the acquittal recorded by the competent criminal Court will be relevant. It is no doubt canvassed by the learned Government Pleader for Excise that there is an alternative remedy. But it is needless to point out that alternative remedy always need not operate as a bar for exercising the extraordinary jurisdiction under Article 226 and in the peculiar facts and circumstances of the case, especially the judgment of criminal Court acquitting the writ petitioners, I am satisfied that the impugned order as such is not sustainable.

10. For the foregoing reasons, the impugned order is set aside and the 1st respondent is directed to take into consideration, the judgment in SC No. 29 of 2000 on the file I Additional Sessions Judge, Ranaga Reddy District also and pass appropriate orders in this regard within a period of three weeks from today.

11. The writ petition is accordingly disposed of. No order as to costs.